

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Kieberman

24731

FILE: B-207631.2

DATE: April 5, 1983

MATTER OF: Satellite Services

DIGEST:

1. Attendance at prebid conference by noncommissioned officer (NCO) did not undermine integrity of the process where the agency determined that the NCO was not affiliated with any of the bidders prior to submission of the bids and that the NCO's participation in a prebid conference had no effect on the procurement and the record contains no evidence to the contrary.
2. Although the low bidder's name appears in its bid as "Crimson Enterprises," and in its bid bond as "Crimson Enterprises, Inc." where evidence existing prior to bid opening establishes the sameness of the two entities, the difference may properly be waived as a matter of form which does not affect the bidder's identity and the bid may properly be accepted.
3. Bid received by the Government before bid opening should not be rejected as late where, despite the bidder's oral request for return of the bid, the agency retained the bid and later advised the bidder that it still had the bid, after which the bidder submitted an acknowledgment of subsequent solicitation amendments.

Satellite Services (Satellite) protests the proposed award of a contract for transient aircraft services at Pease Air Force Base to Crimson Enterprises, Inc. (Crimson), under invitation for bids (IFB) No. F27604-82-B-0002, issued by the Air Force. Satellite asserts that Crimson was improperly represented at a prebid conference by an active duty Air Force chief master sergeant (sergeant), that Crimson's bid bond was issued on behalf of an entity other than the bidder and that Crimson's bid was late and was improperly considered.

We find the protest without merit.

The sergeant referred to in the protest attended the prebid conference on December 11, 1981, while on active duty at Seymour Johnson Air Force Base. The contract administrator was advised that the sergeant was on active duty and was attending the conference because he was investigating the possibility of starting his own transient aircraft maintenance business. The sergeant was advised that Air Force Regulation 30-30, Standards of Conduct, might present an obstacle to his participation in the procurement. The sergeant stated that he did not represent any company. Crimson's bid was submitted on December 15, 1981, for the January 29, 1982, bid opening and contained no evidence that the sergeant was affiliated with Crimson. A subsequent Crimson bid submitted on March 23, 1982, relating to a Plattsburg Air Force Base procurement, was signed by the sergeant on Crimson's behalf, after the sergeant had obtained the required Air Force approval for off-duty employment, in accordance with the above standards of conduct.

There is nothing in the record to indicate that the sergeant's involvement in the procurement in question was on behalf of Crimson. Moreover, the question of whether the sergeant's actions violated Air Force standards of conduct is for resolution by the Air Force, not our Office. Satellite Services, B-206954, October 4, 1982, 82-2 CPD 308. An investigation by the Air Force Office of Special Investigation resulted in the finding that there was no evidence of contact between Crimson and the sergeant prior to the preparation of the Crimson bid at Pease, no evidence of improper conduct by the sergeant, nor any evidence that this procurement was compromised in any manner by the sergeant's involvement.

Regarding the allegedly improper bid bond, Satellite points out that Crimson's bid and its bid bond were submitted under separate cover, and that the bid is in the name "Crimson Enterprises," while the bid bond is issued to "Crimson Enterprises, Inc." Satellite also points out that the address listed for Crimson on the Air Force bidders mailing list is different than that listed for Crimson on its bid bond.

We find this latter information of no significance since all documents submitted by Crimson, including its bid and its bid bond, contain the same address. As to the

discrepancy in the company name, we have recognized that the name of the bidding entity need not be exactly the same in all of the bid documents so long as it can be established that the differently identified entities are actually the same. Mark II, Inc., B-203694, February 8, 1982, 82-1 CPD 104. More specifically, we have held that a bid is responsive where the name appearing on the bid differed from that appearing on the bid bond, but the discrepancy appeared to be a matter of form which did not affect the identity of the firm or the liability of the surety to the Government if the bidder were to refuse the award documents. Jack B. Imperiale Fence Co., Inc., B-203261, October 26, 1981, 81-2 CPD 339.

In this instance, Crimson identified itself as "Crimson Enterprises" on its bid and under section "K," line 5, designating the "type of business organization," Crimson indicated that it was an "individual." The bid bond was issued in the name of "Crimson Enterprises, Inc." designated as a "corporation." However, as noted above, Crimson's address is the same in both the bid bond and in the bid. Crimson's bid bond included a cover letter dated December 15, 1981, on "Crimson Enterprises, Inc." letterhead, signed by Carl H. Weidner as "President, Crimson Enterprises, Inc.," stating that Mr. Bill Noles was authorized to sign the bid for Crimson under the solicitation in question. The previously submitted bid, also dated December 15, 1981, was, in fact, signed by Mr. Noles as the Crimson project manager and representative.

We believe that this evidence establishes that Crimson has used the two different names interchangeably and, on the bid bond submitted, it appears that the surety was clearly obligated on behalf of the entity that submitted the bid. Accordingly, the name discrepancy may be waived as a minor informality. To hold otherwise would require application of an overly technical standard and ignore the fact that the Government will obtain the required protection. Monongahela & Ohio Dredging Company, B-186515, August 3, 1976, 76-2 CPD 122.

With regard to the acceptance of Crimson's alleged late bid, Satellite asserts that the Air Force misapplied the late bid rules and thereby gave Crimson the opportunity to disavow its bid after bid opening because the contracting officer called Crimson to ascertain if it "stood by" its bid.

Crimson's bid was sent by registered mail and was received by the contracting officer on December 18, 1981, well in advance of bid opening on January 29, 1982. On December 20, 1981, Crimson by phone, asked to have the bid returned because of anticipated changes in a forthcoming amendment. However, while the bid was placed in the outgoing mail, it was not delivered to Crimson by the Postal Service, but instead was returned to the Air Force base administration office on January 25, 1982, where it was placed in a safe. The bid was not located by the contracting officer until February 4, after bid opening had taken place. In the interim, its bid having not been returned, Crimson submitted its bid bond and acknowledged three amendments to the solicitation. Prior to bid opening on or about January 12, 1982, Crimson telephoned the contracting officer to ascertain if its bid was still in the Air Force's possession. The contracting officer, apparently mistaking another envelope in the bid box for Crimson's bid, acknowledged that it still had the bid. Crimson sent a letter acknowledging receipt of the three amendments on January 14, 1982, received by the Air Force on January 28, 1982, which made no changes in its bid.

When bids were opened on January 29, 1982, the contracting officer discovered that the envelope from Crimson which was in the bid box contained only Crimson's bid bond. Satellite's bid at a price of \$1,043,460 was the only other bid received. On February 4, 1982, the Crimson bid of \$649,772, was located in the safe. The contracting officer had telephoned Crimson on February 1, 1982, to inquire if it had intended to submit a bid. On February 5, 1982, the contracting officer again telephoned Crimson asking whether Crimson "stood by" its bid and advising it of what had transpired. The Air Force subsequently determined that Government mishandling after receipt, during the period between December 20, 1981, and February 4, 1982, was the sole cause of the bid's lateness and, as a result, Crimson's bid was eligible for award under the late bid clause. As authority for this determination, the Air Force cites X-Tyal International Corporation, B-202434, January 7, 1982, 82-1 CPD 19.

We concur with the Air Force's finding. Crimson's bid arrived over a month before bid opening and, despite the Air Force's apparent intention to return the bid, it was retained. On January 12, 1982, the Air Force mistakenly confirmed that it still had Crimson's bid and Crimson subsequently acknowledged the amendments to the IFB, relying on this representation. Since the bid was received before bid opening and in the Government's control until after bid opening, when it was located in the safe, the "lateness" of Crimson's bid was due solely to Government mishandling and the bid was properly considered for award. In fact, since there is no question that the bid was received prior to bid opening, the bid may be considered without recourse to the late bid clause since it was timely received and was not considered only due to Government mishandling. Lockley Manufacturing Co., Inc., B-195589, January 4, 1980, 80-1 CPD 15; Hydro Fitting Manufacturing Corporation, 54 Comp. Gen. 999 (1975), 75-1 CPD 331.

Under these circumstances, the fact that the Air Force contracting officer contacted Crimson after bid opening to inquire if it "stood by" its bid is without effect. As a general rule, a bid may only be withdrawn prior to the exact time set for bid opening. Northwest Ground Covers and Nursery, B-201609, February 9, 1981, 81-1 CPD 81. The purpose of a bid bond to insure that if a bidder is successful it will execute all contractual documents necessary to create a binding contract; that is, to insure that a successful bidder will not be able to simply withdraw its bid after bid opening. Marine Power and Equipment Company, Inc., B-208393, December 7, 1982, 82-2 CPD 514; William B. Jolley, B-207982, November 9, 1982, 82-2 CPD 426. In this respect, the IFB's late bid clause imposes the same limitations on bid withdrawals as on bids, except that withdrawal of bids by telegram as well as in writing is authorized and a bid may be withdrawn in person by a bidder or his authorized representative, but only if the withdrawal is made prior to the time set for the receipt of bids. Clearly, Crimson's oral, telephonic request for return of its bid did not constitute a valid withdrawal request and once the bid was located in the Air Force's custody, Crimson was bound by the bid, regardless of the contracting officer's telephone inquiry.

We deny the protest.

for *Wilton F. Rowland*
Comptroller General
of the United States